



And you think maybe this is not home

NZ Muslim Community experiences with New Zealand Authorities

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2. Executive Summary

NZ MUSLIM COMMUNITY EXPERIENCES WITH NEW ZEALAND AUTHORITIES

In Spring 2016 the Human Rights Foundation of Aotearoa New Zealand (HRF) commenced an initiative to facilitate effective dialogue between the Muslim community and relevant authorities, related particularly to the sharing of internet and social media content. The aim was to provide clarity to the community concerning what activities are and are not considered to be lawful when using the Internet and social media.

As part of this initiative, the HRF held an initial informal pilot survey to identify the needs and concerns of the New Zealand Muslim community in its interactions with New Zealand authorities. When conducting this survey other issues consistently arose concerning interactions with the New Zealand Security Intelligence Services and New Zealand Customs. Next steps include follow up in-depth interviews, liaison with the relevant New Zealand authorities, dialogue between the Muslim community and relevant authorities and public legal education.

Summary of Recommendations

Key recommendations are as follows:

Airport Travellers

There is a need for clarity about the rights of travellers going through New Zealand airports, particularly during their interactions with NZ Customs, about:

- Legal rights around the searching of property;
- The nature of 'interviews' conducted by NZ Customs – they are carried out in an informal manner but are recorded by NZ Customs as formal interviews;
- Access to information collected by NZ Customs during these 'interviews'
- Complaint mechanisms about interactions with authorities at NZ airports – before, during and after 'interviews' or searches;
- Cultural training for airport officials (NZ Customs), including on the issue of dogs and the touching of the Holy Quran

Interactions with NZ Security Intelligence Services

There is a similar need for clarity about interactions with NZSIS, in particular:

- Purpose of contact
- Access to information
- A contact point in the NZSIS for those who wish to discuss nature of contact, including any concerns or complaints
- Complaint mechanisms

Freedom of Expression - Social Media

There is a lack of clarity about what is and is not permissible content to share online, particularly on Facebook and other apps and a need for the community to be able to discuss these issues without fear of repercussions.

Need for Dialogue

Overall there is need for public education about the rights of the community in relation to:

- airport stops, interviews and search interactions with the NZSIS
- Freedom of expression on social media
- Complaint mechanisms

3. Background

One of the HRF's primary aims is to work on issues and in areas where there is a gap in civil society engagement – often this involves working with severely disadvantaged communities. The HRF identified a need to support the New Zealand Muslim community to better liaise and have dialogue with the relevant authorities about the issues of concern to the community, including both the use of social media and national security.

The relevant human rights involved in this project include freedom of opinion and expression (Article 19, UDHR), right to privacy (Article 17, ICCPR) – including monitoring of electronic communications – and freedom of movement (Article 13(2), UDHR; Article 12, ICCPR) and the rule of law – that is, the exercise of power is subjected to agreed rules, guaranteeing the protection of all human rights.

The New Zealand Muslim community, particularly the community's youth, generally lack clarity about what activities are considered by New Zealand authorities (including the security intelligence services) to be contrary to national security or to amount to "objectionable material" and hence be banned. In particular, it was identified that there was a need for youth (and their parents/guardians) to be clear about what is appropriate sharing of information on social media about topical issues such as ISIS (especially ISIS propaganda). The community has been unclear about the line between sharing current affairs (such as YouTube videos of atrocities), which is usually lawful, and objectionable (banned) material.

There are fears within the Muslim community about the consequences of discussing such issues. Many community members consider that it is for the New Zealand authorities to 'sort out problems' within the community. However, the approach of the New Zealand authorities appears to be that it is for the Muslim community to sort out any problems related to extremism. There has been a general lack of discussion within the Muslim community about counter-terrorism initiatives and it was not until December 2015 that the first attempts to hold community meetings about ISIS were initiated and run by Ahmed Zaoui and his colleagues.

This is not to say that there are no links between the community and the authorities. There are discussions from time to time between certain Muslim organisations and the New Zealand security services, but some feel that these organisations are not necessarily well placed to represent, or even be in contact with, youth and other relevant sections of the community.

The Muslim community, particularly parents, are worried about their children encountering problems with New Zealand authorities – but without knowing what behaviour or activities may be wrong. When this initiative began, a member of the community had been arrested and detained in prison for apparently to sharing ISIS material, including YouTube videos, with others and on Facebook. Other members of the community have had their passports cancelled as a result of the security services raising national security concerns about them (section 8A, Passports Act).

It is known that the NZ Government has been setting up a multi-agency counter-terrorism initiative. There is concern in the community that there is inadequate funding being made available for engagement with the Muslim community and that there is an excessive focus on security solutions. This is out of step with the international approach – see, for example, comments by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism* in February 2016: "The demonstrable inadequacy of a strict security approach to countering terrorism has precipitated a shift in the international community's focus, towards measures targeted at addressing the underlying grievances that foster violent extremism¹".

Against this background, the HRF decided to undertake an informal study of the experiences of Muslim travellers and those having issues with the NZSIS, in order to develop some recommendations to protect the human rights of this community. A questionnaire was developed for the purpose of consulting members of the community on their experiences, and interviews conducted across a wide range of Muslim venues, including in several regional centres.

¹ (<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Pages/ListReports.aspx>)

4. Overview – Census data

The Muslim community represents a significant section of New Zealand's population. In the 2013 Census, the number of people affiliating with the Muslim religion had increased 27.9 percent since 2006 (from 36,072 people in 2006 to 46,149 people in 2013). At this rate of growth, the community would exceed 55,000 people in 2018.

Of those who affiliated with Islam in 2013:

- More than a quarter (25.7 percent) were born in New Zealand
- 21.0 percent were born in the Pacific Islands
- 26.9 percent were born in Asia
- 23.3 percent were born in the Middle East and Africa

5. Consultation process – who's involved?

5.1 Who's involved?

Human Rights Foundation:

The Human Rights Foundation is a non-governmental organisation established in December 2001 to promote and defend human rights through research based education and advocacy. The HRF also monitors compliance with and implementation of New Zealand's international obligations in accordance with the requirements of the international conventions New Zealand has signed, and has prepared a range of shadow reports for relevant United Nations treaty bodies to be considered alongside official reports.

The following organisations were contacted and consulted about this project with a view to identifying community members who may have had relevant experiences:

Federation of Islamic Associations of New Zealand (FIANZ)
New Zealand Muslim Association (NZMA)
WTG – Working Together
New Zealand Islamic Development Trust (NZIDT)
Al Manar Trust
Masjid Omar
University of Auckland Muslim Students Organisation
Al Hikmah Trust

Imams at the following Masjids were also consulted: Al Manar, Masjid E-Umar (Mt Roskill), Al Taqwa

The following locations were also visited with questionnaires:

Auckland University of Technology Prayer Space (26 August 2016 - 3 x Jummah prayers), 2 September 2016
Al-Manar Mosque (3 and 4 September 2016 (after Isha)
Masjid E-Umar 9 September 2016 (Jumman prayers)
Auckland Eid Day (6 September 2016, included brief focus on Sudanese and Syrian communities)
Syrian gathering 17 September 2016

5.2 Interviews

A questionnaire was prepared and 21 forms were completed with the assistance of two researchers from the HRF covering a total of 25 individuals. The survey form (Appendix A) and the accompanying information sheet (Appendix B) are attached.

A wide range of Muslim communities were involved in the study, including: Maghreb, Mashreq, Gulf, Syrian, Indian, Sri Lankan, Iraqi and Somali. Of the total of 23 interactions referred to by interviewees, seven were with the NZSIS, and 16 with NZ Customs. None were focused primarily on interactions with the NZ Police, although the Police were mentioned on occasion.

Obtaining information from the Muslim community is not easy. Fears are high about speaking out about dealings with the New Zealand authorities, particularly concerning security issues. Many wished to convey their views but only on a confidential basis, as they did not want to be known for criticising those in authority. Others were too fearful to participate because they did not want to be seen or stigmatised by others in the community. Some were unaware of issues with the New Zealand authorities and so were unaware of the need for the Project. A small number, often in professional work, did not see a need for the Project and did not wish the community to be seen as criticising the New Zealand authorities.

Two main themes emerged from the interviews about the community's interactions with New Zealand authorities; they want to know what their rights are *vis a vis* New Zealand authorities and they also want clear accountabilities and responsibilities established for New Zealand agencies in their dealings with the community.

The main concerns expressed by the community were over dealings with officials at airports, primarily NZ Customs, and with the NZSIS. Some minor issues were raised regarding interactions with the NZ Police. Interviewees questioned why they were being targeted – “this is a peaceful country”. The study established that the Syrian community was the most targeted. In this community, there was an interest in talking to interviewers but not wanting to stand out as this could result in being labeled or the community or others stigmatised. Several members of the Syrian community indicated that they had multiple interactions with NZSIS and NZ Customs. A number have had more than 2 interactions with NZ Customs. Aside from the interviews, at a gathering of over 25 members of the male Syrian community with a range of ages, a show of hands indicated that only three of those present had not been stopped by NZ Customs.

In relation to interactions with the NZSIS, a number of these had to do with Facebook content.

The following section summarises the data obtained during the study, based mostly on the interviews with 25 community members.

6. NZ Customs – Ehana - Humiliation

There was a high level of concern about the actions of NZ Customs towards members of the Muslim community returning from overseas travel with the key word used being ‘ehana’ - humiliation. Interviewees generally understood that it was the role of the NZ border authorities to talk to travellers about their journey. However, there was a common theme that the way NZ Customs is carrying out its responsibilities is counter-productive, and has the potential to alienate parts of the community.

Most interviewees said that felt unprepared for such interactions and no attempt was made to inform them of their rights. Many had just completed a long-haul flight and were tired and often due to meet family or friends who were waiting outside. Questions were raised, such as: “Why can't you communicate with someone outside?” “You need to be able to communicate with the people waiting outside to say go home, this is going to take a while”. There were also concerns about privacy – when digital devices are searched, NZ Customs officers are able to see images of women without hijab.

6.1 Some Quotes

“You are tired and think you are finally home...and you think “Maybe this is not home”.

“I understood why stopped me once, but to happen again?”

“I didn't complain about the first scan. They kept asking me if I had hidden anything. They asked me so many times and I kept saying no. Then they let me go and I thought I was clear. Then they stopped me again.”

"Understand why but a bit angry because not being done right."

"If a parent keeps beating a child calling them criminals they turn out this way. If the State does this repeatedly then the young people can internalise this and create the problem they say they are trying to stop."

"After 9/11 things were really bad, people were very suspicious and angry, and then things improved. People realised Muslims were a community and things improved. But the rise of ISIS and Trump has fired things up again."

"Australia is an interesting case with the increase in far right groups there and life becoming difficult for Muslims."

"Muslims are far more afraid of intelligence (services) than New Zealand Police."

"Being left alone by the SIS is the main thing."

"The reality is you are powerless, they [the SIS] can do whatever they want."

"There is a lot of paranoia about surveillance."

"Feel like I can't live a normal life."

"I've been in this country for so many years it is annoying"

"A lot of young people feel oppressed by being seen as Muslim, Arab, black. We are not being looked at as a human being but as a category. When young people feel that, instead of lifting people's spirits, it breaks them."

"In terms of people with a refugee breakdown, it is easy for young people to be brought down. It takes away their confidence."

"Our people are becoming spies on our own people."

"When they want to meet us, we want to know, why do they want to do everything in a secretive way? Why not put the issue on the table and speak with us? We are scared because they can take information we give and then flick it back onto you."

6.2 A Typical Case Study

A typical case study is set out below :

*I am emailing you regarding my experience at the NZ customs at the airport yesterday as I was returning my overseas trip so that you are aware of this continued practice by the customs of deliberate target of people from Muslim backgrounds. Despite our outcry and numerous complaints about the NZ Airport customs over the years, nothing seems to change. This story is not unique to me but I am sure many Muslims face this unfair treatment at the hands of the NZ customs. I had been away 10 days visiting Turkey. I also spent couple of days in Dubai. When I arrived back yesterday at the airport I was sent to the special lane where people are questioned about their trip and their bags searched. I don't mind to be searched occasionally as I have got nothing to hide but I was surprised at the level of questioning about my trip. I had to give the names of the places I visited in Istanbul, addresses and contact details of the people I met, hotels I stayed, the nature of my trip, giving details of the conference I attended **on behalf of FIANZ** - it was indeed very grilling and I felt sick to my stomach that I had to give the contact details of the people I met for the first time at the conference or members of the Somali community I*

met by chance etc. The customs officer who was questioning me was a young woman and she told me the reason for this questioning was because of my visit to Turkey, She told me she herself visited Turkey last year and I asked if she was questioned about her trip upon her return. Of course the answer was NO.

After spending about 45 minutes with the first officer, I proceeded to another officer in another area where my mobile phone was taken away from me and my bags emptied. I had to give names and contact details of people I know or organisations I belong here in New Zealand. So I gave both your names and mobile numbers as I told them I belonged to FIANZ and my local Waikato Muslim Association. Furthermore they took my mobile and a USB flash drive as they said they needed to see the contents.

They did this viewing in a room away from me so I am not sure whether they downloaded all my phone contacts/messages or just browsed a bit to check any suspicious content. I asked the officer about that and he assured me that nothing was downloaded. I don't trust them. The sad thing is that I went through Istanbul and Dubai airports without any problem because, I am assuming, they see a New Zealand passport holder and they think I would pose no risk but the country that I hold their passport treats me with suspicion and assumes I am someone to be watched over.

All my previous trips it was the same experience - other countries I visited, no problem but coming back "home(?)" it is different. To my count this would be my fifth bad experience at the NZ airport out of possible 11 overseas trips since I arrived in New Zealand 23 years ago. The only consolation I got from the officer yesterday as he told me everything was fine was that hopefully next time I would not be a target!! I don't believe that. Anyways just sharing that and hoping that we continue highlighting this issue with the government officials we engage with. I have cc'ed our local MP...

6.3 Recommendations

Airport Travellers

There is a need for clarity about the rights of travellers going through New Zealand airports, particularly during their interactions with NZ Customs, about:

- Legal rights around the searching of property, particularly about personal photos, whether information and material is copied and if so is it being retained;
- The nature of 'interviews' conducted by NZ Customs – they are carried out in an informal manner but are recorded by NZ Customs as formal interviews;
- Access to information collected by NZ Customs during these 'interviews'
- Complaint mechanisms about interactions with authorities at NZ airports – before, during and after 'interviews' or searches;
- Cultural training for airport officials (NZ Customs), including on the issue of dogs and the touching of the Holy Quran

7. New Zealand Security Intelligence Services

There were consistent reports of contacts with the community by the NZSIS. Like with NZ Customs, the community can understand why the NZSIS wishes to be in contact. However, in contrast with Customs, members of the community feel uncomfortable about the nature of their interactions with the NZSIS and would prefer not to have such contact particularly when it concerned their own personal

situation. However, some understand the need for collaboration in order to ease concerns they may have at the community level. "If they have an issue and I can help why not?"

This discomfort seems to stem from a fear of dealing with the *mukhabarat*. In fact, there were a number of reports that officers from the NZSIS introduce themselves as being from the *mukhabarat*. It is understood that this is an attempt at cultural sensitivity; however the effect is the opposite. NZSIS officers introducing themselves as *mukhabarat* induces immediate fear.

Informants said that the NZSIS tends to interview members of the community in a public place, such as a café. This is seen as more positive than being taken to, for example, a hotel room or office. Individuals assumed that such meetings would not be recorded, However, this needs to be clarified.

Overall, members reported that interactions with the NZSIS were respectful and positive, *"friendly in terms of how they talk to us"*. There have been situations where members thought they were able to resolve an issue of concern with the NZSIS after a meeting. However, there were consistent reports of members feeling unable to stop contact from the NZSIS and that they did not know how to manage the relationship. At the more extreme end there were members of the community who had experienced being asked by the NZSIS to do things that they did not want to do.

There were also consistent reports that NZSIS officers while friendly were actually asking leading questions to try and make it okay for the person being interviewed to admit sympathies with ISIS or violence.

It was also regularly reported that although the meeting seemed friendly NZSIS were not transparent in the meeting about the purpose of the meeting. So, they would be friendly and then at the end bring up an issue, such as a Facebook post

"...and then bam the trust is gone – I am being transparent here and have a clear conscience to help and then it is clear they don't trust me, there is not trust."

"I think they are approaching me to talk about concerns about the community but then I realise they are approaching me to scrutinise me in particular."

"Asking someone to spare some time for you, to come out and talk with you. They know they are not forced to come out, and they are coming out in good faith. Interviews are chat chat chat, then at the end they brought in his FB post, didn't expect it, thought normal chat and at the very end they felt very shocked. That is when it hit me: they are here for me, you fit a profile."

7.1 Recommendations:

Interactions with NZ Security Intelligence Services

There is a similar need for clarity about interactions with NZSIS, in particular:

- Purpose of contact
- Access to information
- A contact point in the NZSIS for those who wish to discuss nature of contact, including any concerns or complaints
- Complaint mechanisms

8. Freedom of Expression - Social media

Freedom of expression issues are of concern to the community. There is a lack of clarity about what is and is not permissible content to share online, particularly on Facebook. The community is aware of the case of *Imran Patel*, who was jailed for distributing ISIS propaganda..

8.1 Recommendations

Freedom of Expression - Social Media

- There is a lack of clarity about what is and is not permissible content to share online, particularly on Facebook and other apps and a need for the community to be able to discuss these issues without fear of repercussions.

9. NZ Police

Overall no serious issues were raised about interactions with the NZ Police, except for some concerns about racial profiling. The clear feedback is that the community would rather be visited by the police rather than those they deem as “secret” service or *mukhabarat*. This includes that the police are more transparent and easily identifiable. There is also a positive perception when dealing with the police that they are acting for the benefit of the community, rather than in a manner than would be deemed as viewing the individual with a guilty eye. The police are also seen as more accountable. The community is aware of established complaint mechanisms and procedures in place should a police officer act outside their lawful authority.

10. Where to next?

Interviewees considered that the Muslim community needed to feel able to meet and discuss these issues as a community. There are, however, high levels of fear in the community in holding and attending such meetings or discussions.

- Dialogue is needed with the relevant New Zealand authorities to communicate the above experiences, concerns and queries. Following such dialogue there should be a series of meetings which address the following:
- Education about what is and is not legally permissible in terms of airport stops, social media and freedom of expression issues and interactions with security officials (these could be done in stages as separate meetings and topics);
- Education about accountabilities by officials, oversight bodies and complaint mechanisms (again, these could be done in stages as separate meetings and topics).

10.1 Recommendations

Overall there is need for public education about the rights of the community in relation to:

- airport stops;
- Freedom of expression on social media;
- interviews and search interactions with the NZSIS;
- Complaint mechanisms.